

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

MURRAY PAVING & RECLAMATION, INC.,

Plaintiff,

v.

INGERSOLL-RAND EQUIPMENT & SERVICES  
COMPANY and INGERSOLL-RAND COMPANY,

Defendants.

CIVIL ACTION No. 04-10328 GAO

**AFFIDAVIT OF ANDREW ANDRE IN SUPPORT OF  
INGERSOLL-RAND COMPANY'S MOTION FOR SUMMARY JUDGMENT**

I, Andrew Andre, being duly sworn, deposes and says as follows:

1. I am a former Vice President and Branch Manager of Ingersoll-Rand Company d/b/a Ingersoll-Rand Equipment & Services Company ("Ingersoll-Rand") located in Southboro, Massachusetts.
2. I currently reside in Tennessee and am employed by Atlas Copco Drilling Solutions, 1500 J.P. Hennessey Drive, La Vergne, TN 37086.
3. I make this affidavit in support of Ingersoll-Rand's Motion for Summary Judgment. I have actual knowledge of the matters stated in this affidavit and could and would so testify if called as a witness.
4. On or about May 1, 2003, Murray purchased a Blaw-Knox paver, model no. FF4410 ("Paver"), from Ingersoll-Rand for \$230,100. A true and correct copy of the sales order for the Paver, dated May 1, 2003 ("Sales Order") is attached hereto as Exhibit A.

5. Murray paid a net purchase price of \$236,775 for the Paver, which included \$231,000 for the Paver, \$5,000 for an extended warranty, \$2,400 in freight charges and \$11,275 in sales tax, minus \$12,000 for a piece of machinery traded in by plaintiff.

6. Attached to the Sales Order was Ingersoll-Rand's standard Terms and Conditions of Sale, which consists of a single-sided, one-page document ("Terms and Conditions"). A true and correct copy of the Terms and Conditions is attached hereto as Exhibit B.

7. Plaintiff also purchased a three-year extended Blaw-Knox warranty from Ingersoll-Rand when plaintiff purchased the paver ("Blaw-Knox Warranty"). A true and correct copy of the Blaw-Knox Warranty is attached hereto as Exhibit C.

8. When plaintiff asserted that there were problems with the Paver, Ingersoll-Rand offered to fix the Paver pursuant to the Paver's warranties, i.e., the Terms and Conditions and Blaw-Knox Warranty, collectively referred to as the "Warranties." Plaintiff demanded that Ingersoll-Rand take back the Paver and refund the purchase price. Ingersoll-Rand refused to take back the Paver or refund the purchase price based on the limitations set forth in the Warranties.

9. Ingersoll-Rand did, however, offer to exchange the Paver with a new one. Further, Ingersoll-Rand offered to fly plaintiff's President, Arnold Johnson, to the Blaw-Knox factory in Shippensburg, Pennsylvania, so that Mr. Johnson could meet the people who would build him a new paver to allay any concerns he had regarding the quality of the new paver. Murray rejected this offer and continued to demand that Ingersoll-Rand take back the Paver and return the purchase price.

10. Ingersoll-Rand has always maintained that it would repair the Paver pursuant to the Warranties.

11. Ingersoll-Rand has a full-service repair shop and mechanics who are trained to identify and fix problems with Blaw-Knox pavers at Ingersoll-Rand's facility in Southboro, Massachusetts.

12. On or about October 10, 2003, plaintiff made demand upon Ingersoll-Rand pursuant to M.G.L. ch. 93A for Ingersoll-Rand to take back the Paver, refund the full purchase price, and compensate plaintiff "for all losses suffered to date." A copy of the demand letter is attached hereto as Exhibit D.

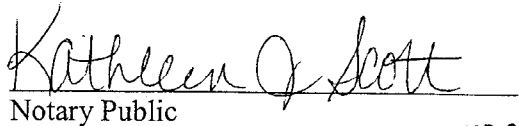
13. On or about October 21, 2003, Ingersoll-Rand responded to plaintiff's Chapter 93A demand letter by stating that "IR has honored, and will continue to honor, its warranty obligations." A copy of Ingersoll-Rand's response letter is attached hereto as Exhibit E.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. EXECUTED THIS 23<sup>rd</sup> DAY OF NOVEMBER, 2004.

  
Andrew Andre

STATE OF Illinois

Subscribed and sworn to before me this 23 day of November, 2004.

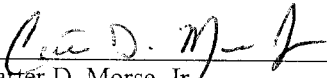
  
Notary Public

My Commission Expires MAR. 26, 2005

My commission expires \_\_\_\_\_

Certificate of Service

I certify that on November 30, 2004, I served the foregoing document on plaintiff by causing a copy of the same to be delivered by HAND DELIVERY to its counsel of record: Peter F. Davis, 15 Broad Street, Suite 512, Boston, Massachusetts 02109.

  
Carter D. Morse, Jr.